



2

Division Bench (Criminal)

IN THE HIGH COURT OF JUDICATURE OF M.P. AT JABALPUR.

Criminal Appeal No. 978 OF 1997.

Appellant.

(In jail)

Jhari @ Heerachand Gond,
son of Sobran Gond, aged 25 years,
Occupation Agricultural r/o village
Karra P.S. Chalgali Distt: Sarguja
M.P.

Versus

Respondent.

::

The State of M.P.

Through the Police Station Chalgali,
Distt: Sarguja M.P.

CRIMINAL APPEAL UNDER SECTION 374(2) OF THE CODE
OF CRIMINAL PROCEDURE 1973.

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक - Cr.A. No. 978/97
सन् 200

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	<u>DIVISION BENCH: HON'BLE SHRI L.C.BHADOO & HON'BLE SHRI DHIRENDRA MISHRA, JJ</u> CRIMINAL APPEAL NO. 978 of 1997 Appellant : Jhari @ Heerachand Gond Vs. Respondent : State of Madhya Pradesh Shri F.S. Khare, learned counsel for the appellant. Shri J. D. Bajpai, learned Additional Public Prosecutor with Shri M.P.S. Bhatia, learned Panel Lawyer for the respondent/State. <u>ORAL JUDGMENT</u> (15.02.2006) <u>L.C.Bhadoo, J</u> The appellant has preferred this appeal under Section 374(2) of the Criminal Procedure Code questioning the legality and correctness of the judgment of conviction and order of sentence dated 01.05.97 passed by learned First Additional Sessions Judge, Ambikapur in S.T. No. 51/96 whereby the learned Session Judge after holding the accused/appellant guilty for commission of the offence under Section 302 of the Indian Penal Code sentenced him to undergo imprisonment for life. 2. Case of the prosecution in brief is that P.W.-1 Nanku lodged the report P-1 in the police station Karri (Chalgali) to the effect that he is the resident of Village Karri (Chalgali) and one Kendi daughter of Sukhnandan of his village was married four years back with the accused/appellant Jhari @	

[पीछे देखिये]

आदेश पत्रक

मामला क्रमांक

Cr. A. No. 918/97
सन 2000

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -2-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	Heerachand Gond and Kendi used to go to her in laws place but most of the time she used to remain at her parents house. Her husband i.e. the accused came and informed Ramnandan uncle of deceased that he will not keep Kendi and therefore she be ~~get~~ married somewhere else. On 20th May 1995 at about 12.00 in the mid night the accused assaulted Kendi with the axe on his neck and head as a result of which she died. P.W.2 Nago mother of deceased and Guddi Malik Maade saw the accused while assaulting her daughter and also when he was running away. Receiving this report, Incharge, Police Station Karri (Chalgali) registered the case under Section 302 of the IPC, left for the scene of occurrence, prepared the site plan P-3 after giving notice to the panchas P-4 and prepared Panchnama P-5 of the body of Kendi Bai. Blood stained soil and plain soil were taken into possession from the place of occurrence under P-6. Body of Kendi Bai was sent to the Primary Health Centre, Pratappur for post mortem examination under P-7 where Dr. R. L. Thakur conducted the post mortem and prepared the post mortem report P-11. The clothes of the accused were taken into possession under P-8 and the clothes of the deceased and the axe sent by the doctor were taken into possession under P-9. After completion of the investigation the charge sheet was filed in the Court of Judicial Magistrate First Class, Ramanujganj who, in turn committed the case to the Sessions Court, Ambikapur from where the learned Additional Session Judge received the case on transfer for trial. 3. The prosecution in order to establish the charge against the accused examined seven witnesses. Statement of the accused was also recorded under Section 313 of the Cr.P.C. in which he denied the prosecution	

[पीछे देखिये]

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक

C.A.No. 918/97
सन् 2000

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -3-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	evidence and stated that he is innocent and he has been falsely implicated in the crime.	
4.	After hearing the arguments of the Additional Public Prosecutor and counsel for the accused/appellant, learned Additional Sessions Judge convicted and sentenced the accused/appellant as mentioned in paragraph one of this judgment.	
5.	We have heard Shri F.S. Khare, learned counsel for the accused/appellant and Shri J.D.Bajpai learned Addl. Public Prosecutor and Shri M.P.S.Bhatia, P.L. on behalf of the State.	
6.	Homicidal nature of death of Kendi is not in dispute.	
7.	As far as the involvement of the accused/appellant in the crime is concerned, learned counsel for the accused/appellant argued that the crime in question was committed in the midnight and there was darkness ~~and~~ as such it was not possible for the witnesses namely P.W.-2 Nago Bai and P.W.5 Malik Chand to identify the accused, therefore the involvement of the accused/appellant has not been established. In order to appreciate the arguments advanced by the counsel for the appellant we have perused the statements of Nanku and Malik Chand. P.W.-2 Nago who is the mother of the deceased has stated that at night she along with her daughters Kendi, Parvati and her son Malik Chand were sleeping in the house, the accused came after opening the door of the house and attacked Kendi on her neck and head. On hearing the sound she woke up, ~~and~~ started shouting and the accused ran away after attacking. Thereafter	

[पीछे देखिये]

आदेश पत्रक

मामला क्रमांक

C.A. No. 918/97
सन् 2000

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	-4-	
	her brother in law Ram Nandan, Vishambar, Bandhu and Nanku came there. In the cross examination she has stated that one week before the incident, accused came and left Kendi at her residence saying that he will not keep her daughter at his residence and she may be ~~not~~^{be} married somewhere else. In paragraph three she has admitted that the time was about 1.00 a.m. and it was dark night. The accused came and on raising shout by her he ran away. She saw the accused when he turned his face back while running away and saw that he is her son in law. Thus, it is incorrect to say that she was not able to identify the accused due to darkness. It is also incorrect to say that as the accused deserted her daughter that is why she is implicating him in false case. P.W.-5 Malik Chand who is said to have been sleeping near deceased Kendi has stated that accused is his brother in law and when in the night, his sister raised the cries he woke up and saw that the accused was running away and his sister was lying and there was injury on his head and neck. His mother was also present there and accused left the axe on the spot. In the cross examination he has stated that when his sister Parvati raised the cries he woke up and it was disclosed to the police. It is incorrect to say that he has not seen the accused attacking his sister and he is saying this at the instance of his mother. This witness saw the accused running away from his house. P.W.-2 Nago Bai has stated that the accused attacked her daughter and on hearing the sound she saw the accused and started raising shout but the accused ran away. Similar is the evidence of P.W.-5 Malik Chand who has clearly stated that they were able to identify the accused and even Nago Bai P.W.-2 has stated that when the accused was running away and turned his face backward she was able to identify him.	

[पीछे देखिये]

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक Cr. A. No. 978/97.
सन् 2000

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	-5-	
8.	In view of the above evidence we are of the considered opinion that ~~from~~ ^{after a} the arguments advanced by the counsel for the appellant, the witnesses ~~are~~ ^{are} not able to identify the accused/appellant is without force.	
9.	The evidence of these two witnesses stands corroborated by the medical evidence also and as per Dr. R.L. Thakur, two injuries were found on the body, one in the occipital region and one on the neck and as a result of the neck injury which was on the Thairite bone, trachea Isophagrus and Carotic artery was found cut and there was injury on the parietal region. Therefore in view of the above, the involvement of the accused/appellant in the crime in question is established and we do not find any illegality or infirmity in the judgment of the trial Court.	
10.	In the result, the appeal being devoid of merits deserves to be dismissed. It is accordingly dismissed.	
	Sd/- L.C. Bhadoo Judge	Sd/- Dhirendra Mishra Judge

[पीछे देखिये]